Supreme Court, U.S.
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No. 91-1590

IN THE

Supreme Court of the United States

OCTOBER TERM, 1991

Jeffrey B. Fawell,

Petitioner,

v.

Marisu Cesena, Administrator of the Estate of Timothy J. Golden, Deceased,

Respondent.

Petition For Writ Of Certiorari To The Supreme Court Of Illinois

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Whether the Supreme Court of Illinois properly exercised its equitable jurisdiction when it held that John Doe's accident report was deemed to have been timely filed in accordance with the requirements under Ill. Rev. Stat. (1987), ch. 95½, par. 11-401(b).

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STATUTE INVOLVED

28 U.S.C. § 1257(A) (1991)

Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

STATEMENT OF THE CASE

The material facts of this case are not controverted. For purposes of Jeffrey B. Fawell's petition for writ of certiorari, this Court should rely on the facts presented by the Supreme Court of Illinois in its opinion. (Petitioner's Appendix, 1-5).

ARGUMENT

The decision of the Supreme Court of Illinois in this case was pragmatic and just. The Supreme Court of Illinois protected the rights of all parties by placing everyone back in the positions they would have been if Officer Payne had accepted the report. The issues of attorney-client privilege and petitioner's purported dilemma arose only because the DuPage County deputy sheriff committed an error when he refused to accept John Doe's accident report. Had the deputy sheriff accepted the report in accordance with the Illinois Reporting Statute, John Doe would have timely filed his accident report, respondent would have discovered John Doe's identity, and petitioner would not have confronted any attorney-client privilege issues. The Supreme Court of Illinois simply acknowledged that the deputy sheriff did commit an error and rectified the entire problem by ordering John Doe's accident report to be considered as timely filed. The order of the Illinois Supreme Court placed John Doe and the petitioner back to the positions they would have found themselves had the deputy sheriff accepted the accident report on September 29, 1987. John Doe's rights are protected. He is

granted the same immunities and is subject to the same criminal and civil consequences of his actions as any other driver in the State of Illinois who reported an accident within the three hour limit. The holding was clearly pragmatic and patently just. This writ of certiorari is petitioner's last gasp attempt to create a legal problem where obviously none exists. It should be rejected.

CONCLUSION

Respondent, Marisu Cesena, Administrator of the Estate of Timothy J. Golden, Deceased, through her attorney, requests this Court to deny the petition for a writ of certiorari.

Respectfully submitted,

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